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09/699,963	11/05/1999	Angela Masson	MASSON-001-US	4776
62008	7590	11/23/2007	EXAMINER	
MAIER & MAIER, PLLC 1000 DUKE STREET ALEXANDRIA, VA 22314			TO, TUAN C	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAILED

Application Number: 09/699,963
Filing Date: November 05, 1999
Appellant(s): MASSON, ANGELA

NOV 23 2007

GROUP 3600

Timothy J. Maier
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 09/04/2007 appealing from the Office action mailed 04/19/2007.

(1) Real Party In Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any other related appeals, interference, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Boards' decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Ground of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be viewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon by the examiner as to the ground of rejection:

U.S 4,642,775 Cline et al. Feb. 10, 1987

(9) Grounds of Rejection

The following if the final rejection applicable to the appealed claims:

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

Descriptive material can be characterized as either "functional descriptive material" or nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronic Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

Claims 68-73 are rejected under 35 U.S.C 101 because the claimed invention is directed to non-statutory subject matter as follows. Claim 68 defines operating program embodying functional descriptive material. However, the claim does not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized" –Guidelines Annex IV). That is, the scope of the presently claimed operating program can range from paper on which the program is written, to a program simply contemplated and memorized by a person.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 68-73 are rejected under 35 U.S.C. 102 (b) as being anticipated by Cline et al. (US 4642775).

Regarding claim 68, Cline et al. discloses a system/method of providing a portable computer for use by a aircraft aviation professional (see Cline et al, abstract) comprising: a portable computer (40) to be carried by an pilot to and from and within an aircraft and airport (abstract, figure 1, portable computer 40 is carried by a pilot), the portable computer (40) is provided to pilot for performing variety of tasks including: processing flight information (column 5, lines 20-24), manipulating flight related data to aid in flight decision-making processes resulting in solutions to flight related mathematical computations and runway selections and aircraft operating parameters and procedure (column 7, lines 44-51), calculating pilot fatigue limits and scheduling issues and fuel computations (column 6, lines 56-68; column 1-10), and providing data displays to the pilot (figure 1, column 7, lines 36-51), display unit 42 displays variety of information and data to pilot). The pilot can perform the task of loading aircraft and flight related data such as flight plan, weather information, aircraft crew schedule, aircraft maintenance information, aircraft load weight, and balance, and flight passenger concerns into said portable computer (40) using keyboard (44) for entering data into the computer (40) (column 5, lines 20-24; column 8, lines 1-13).

As to claim 69, Cline et al. teaches that the flight plan and weather information stored on the disk (54) can be loaded into the computer (40). Thus, Cline et al. inherently teaches that an aviation manual for flight operating and emergency procedure, and charts for an off-line emergency airport stored on a floppy disk can be loaded into the computer (40).

As to claim 70, Cline et al. teaches that the portable computer is a laptop computer (see figure 1).

As to claim 71, Cline et al. teaches that the computer (40) is a knee-top ergonomic style unit (see figure 1).

As to claim 72, Cline et al. teaches that the computer (40) has an interactive head gear interface device which is the display unit (42).

As to claim 73, Cline et al further discloses that the aircraft data and flight related data are inputted by the pilot can be done remotely (figure 1).

While patent drawings are not drawn to scale, relationships clearly shown in the drawings of a reference patent cannot be disregarded in determining the patentability of claims. See In re Mraz, 59 CCPA 866, 455 F.2d 1069, 173 USPQ 25 (1972).

(10) Response to Argument

a. In response to the appellant's arguments regarding the 35 U.S.C § 101 rejection, the examiner has realized claim 68 defines operating program embodying functional descriptive material. As directed by the Guidelines Annex IV, "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized". The claim does not define a computer-readable medium or memory and is thus non-statutory for that reason.

b. In response to the appellant's arguments regarding 35 U.S.C. 112, 2nd paragraph, the examiner has withdrawn the 112, 2nd paragraph.

c. In response to the appellant's arguments regarding 35 U.S.C 102(b) rejection, the following is the examiner's comments:

The appellant argued in the arguments section that claims 68-73 are not anticipated by Cline et al.

It is not persuasive because the cited reference to Cline et al. identically discloses each and every limitations of the claims including aircraft crew scheduling, aircraft maintenance information or flight passenger concerns, and loading theses information onto a transportable computer.

In Cline et al., the portable computer (40) can be carried by a pilot to and from and within an aircraft and airport. The portable computer (40) having a display unit, keyboard, memory, built in modem and a built in disk drive. Thus, Cline et al. identically discloses step (a) of claim 68.

The flow chart shown in figure 5a illustrating entry of flight plan input information into the portable computer with sequences that represent algorithm and programs for processing flight information (column 5, lines 20-24, the flight information is input into the portable computer and transmitted to data center 30), manipulating flight related data to aid in flight decision-making processes resulting in solutions to flight related mathematical computations and runway selections and aircraft operating parameters and procedure (column 7, lines 44-51), calculating pilot fatigue limits and scheduling issues and fuel computations (column 6, lines 56-68; column 1-10), and providing data displays to the pilot (figure 1, column 7, lines 36-51), display unit 42 displays variety of

information and data to the pilot. Thus, Cline et al. identically discloses step (b) of claim 68.

Cline further discloses step (c) as cited in claim 68. In Cline et al., the pilot is able to use the keyboard (44) to input certain information relating to a flight plan into the computer (40) including: aircraft registration number, type of aircraft, basic operating weight, taxi fuel weight, reserved fuel weight, preferred mach/TAS, direct operating cost, fuel price per gallon, maximum allowable fuel, departure airport, departure time, destination airport, etc (see column 6, lines 56-68; column 7, lines 1-19). The above flight plan information is entered into the computer (40), and then transmitted to the data center (30) for validation and checking. It is noted that the crew scheduling, aircraft maintenance or flight passenger concerns are all the flight plan information that can be inputted by the pilot to the portable computer (40).

For that reasons, the claims are not patentable over the cited prior art.

(11) Related Proceedings Appendix

The appellant's statement of related proceedings appendix in the brief is correct

For the above reasons, it is believed that the rejection should be sustained.

Conferees:

Tuan To

Meredith Petravick

Cuong Nguyen

TC

MP

CN


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan C To whose telephone number is (571) 272-6985. The examiner can normally be reached on from 8:00AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patent Examiner,


Tuan C To

November 19, 2007